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JUDICIAL ETHICS OPINION JE-50

Formal

QUESTION NO. 1: May a sitting judge be a minority stockholder in a corporation that owns real estate which is leased to the Commonwealth of Kentucky?

ANSWER: A qualified yes. Judge should be conscious of avoiding the appearance of impropriety of being a very visible majority stockholder in this situation.

QUESTION NO. 2: To what extent is the spouse of a member of the judiciary bound by the Canon's Judicial Ethics, e.g., may they be politically active in nonjudicial campaigns, etc.?

ANSWER: No, the spouse of a judge is not bound by the Canons of judicial ethics, and yes, he or she may be politically active in nonjudicial campaigns. The judge, however, is bound by the Canons to urge his spouse not to participate in political campaigns. No penalty is attached, however, if he or she is unsuccessful.

The first question is rather simply answered by a referral to the disqualification section of the Code, SCR 4.300(3)(c)(1)(c). There is nothing wrong with the ownership of such property unless in a particular proceeding it might cause the judge's impartiality to be questioned.

SCR 4.300, Canon 3C(1)(c) Disqualification

A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceedings, or any other interest that could be substantially affected by the outcome of the proceeding;

....

The Committee wished to caution judges, however, to seek to avoid the appearance of impropriety in a situation where the judge was a very visible majority stockholder in property leased to the Commonwealth. While the Code would not prohibit specifically this situation, either, the Committee felt that the general public might assume an impropriety.

The second question is more complicated because of the following provision in the Code. Supreme Court Rule 4.300, Canon 7(b)(1)(a) states:


A candidate, including an incumbent judge for judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

- (a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

Consultation with the U.S. Ethics Opinions revealed Advisory Opinion #53 which states: "A judicial officer has a duty to try to dissuade his spouse from participating in a political campaign." However, the conclusion of the opinion states: "It is not the intention of this opinion to give directions to the spouse as to his or her political activity." Further, the Reporters Notes recognize that the spouse has a "right" to engage in such political conduct. The reporters notes also include the comment that the Committee considered setting mandatory political conduct standards for a candidate's family but rejected the idea because of a lack of a means of enforcement.

Interestingly, New Jersey has omitted Canon 7B from its code. However, there is the case of In re Gaulkin, 351 A.2d 740 (1976). In that case, the Supreme Court of New Jersey first held that the wife of a judge could not run for election to the local board of education. Upon a rehearing, the court reversed itself. They stated that they found no support in the New Jersey Code for their original opinion, but instead found support for a reversal on the basis that a judge's spouse has full rights as a citizen. The court properly noted, however, that if the wife were elected, the judge would have to disqualify himself if the board became a litigant before his court.

Apparently, the best interpretation of our Canon 7B is that a judge is required to "urge" his wife not to participate in political activities but to recognize that a judge really has no ability to prohibit such activity, and that no penalty attaches to his lack of success.


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